

0150-08212-0004

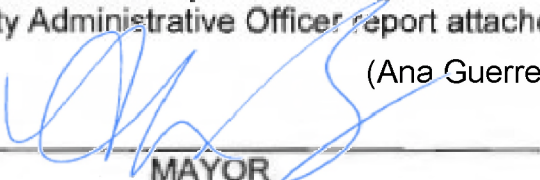
TRANSMITTAL

TO The City Council	DATE 3/29/19	COUNCIL FILE NO.
FROM The Mayor		COUNCIL DISTRICT

**First Supplemental Agreement to the Professional Services Agreement with
Mercer Investment Consulting LLC for Providing Investment and Communications
Consulting Services for the Deferred Compensation Plan and Pension Savings Plan**

Transmitted for your consideration.
See the City Administrative Officer report attached.

(Ana Guerrero) for



MAYOR

RHL:RR:11190048

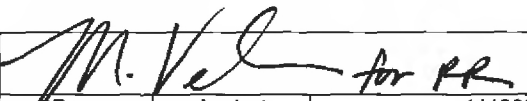
Report From
OFFICE OF THE CITY ADMINISTRATIVE OFFICER
Analysis of Proposed Contract
(\$25,000 or Greater and Longer than Three Months)

To: The Mayor	Date: 03-15-19	C.D. No. All	CAO File No.: 0150-08212-0004
Contracting Department/Bureau: Personnel Department		Contact: Steve Montagna (213) 978-1621 Sherry Cox (213) 473-9122	
Reference: Personnel Department transmittal dated November 26, 2018, referred for report on November 29, 2018. Additional information provided in February 2019.			
Purpose of Contract: This First Supplemental Agreement allows the City to continue receiving investment and communications consulting services for the Deferred Compensation Plan and Pension Savings Plan.			
Type of Contract: () New contract (X) Amendment, Contract No. C-127171		Contract Term Dates: The initial contract term was July 1, 2015 – June 30, 2018. The proposed First Supplemental Agreement will extend the term an additional two years to include July 1, 2015 – June 30, 2020.	
Contract/Amendment Amount: Not to exceed \$379,000			
Proposed amount \$379,000 + Prior award(s) \$270,000 = \$649,000			
Source of funds: Participant fees collected by third party administrators directly support contractual expenses for the Deferred Compensation Plan and Pension Savings Plan.			
Name of Contractor: Mercer Investment Consulting LLC			
Address: 777 South Figueroa Street, Suite 1900, Los Angeles, CA 90017			
	Yes	No	N/A
1. Council has approved the purpose	X		
2. Appropriated funds are available	X		
3. Charter Section 1022 findings completed	X		
4. Proposals have been requested	X		
5. Risk Management review completed	X		
6. Standard Provisions for City Contracts included	X		
7. Workforce that resides in the City: Data not provided			
* Applicable to contracts of \$1,000,000 or more			
Contractor has complied with:		Yes	No
8. Business Inclusion Program		X	
9. Equal Benefits & First Source Hiring Ordinances		X	
10. Contractor Responsibility Ordinance		X	
11. Slavery & Border Wall Disclosure Ordinances		X	
12. Bidder Certification CEC Form 50			X
13. Prohibited Contributors (Bidders) CEC Form 55			X
14. CA Iran Contracting Act of 2010*			X

RECOMMENDATIONS

That the Council:

- 1) Approve and authorize the General Manager of the Personnel Department (Personnel), subject to City Attorney approval as to form, to execute the proposed First Supplemental Agreement to Professional Services Agreement C-127171 (Agreement) with Mercer Investment Consulting, LLC (Mercer) to (i) extend the term two additional years resulting in a five year term effective July 1, 2015 through June 30, 2020, and (ii) increase the expenditure authority by \$379,000 providing a not to exceed total of \$649,000; and,
- 2) Instruct the Personnel Department to work with the City Ethics Commission (CEC) to ensure that Mercer submits current documents for compliance with the applicable contracting requirements prior to executing the Agreement including the Bidder Certification CEC Form 50 and Prohibited Contributors (Bidders) CEC Form 55.

 RR Analyst 11190048	 City Administrative Officer
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SUMMARY

On March 20, 2018, the Board of Deferred Compensation Administration (Board) adopted a Personnel staff recommendation to extend the Agreement with Mercer as a provider for investment and communication consulting services (Services) for the City's Deferred Compensation Plan (DCP) and Pension Savings Plan (PSP). The proposed Agreement continues the current level of Services which include:

- Providing investment option performance monitoring,
- Informing the City of investment issues which may impact the DCP and PSP,
- Developing communications materials, strategies, and participant surveys,
- Advising the Board on staff reports and other investment-related communications, and
- Conducting investment manager searches to support the DCP and PSP.

Personnel states that conducting investment manager searches was not necessary during the initial three year term as the contracts for investment managers were current and did not require replacement. The contracts for investment managers expire beginning September 2019 through June 2020 and will require replacement during the term of the proposed Agreement. The original funding of \$270,000 was consumed during the initial three year term for Services provided under this Agreement and not involving investment manager searches. Personnel anticipates continuing the existing service level and adding activities for investment manager searches. Therefore, a higher level of service and cost is expected, as proposed in this request.

Approval of the proposed First Supplemental Agreement will (i) extend the term by two years resulting in a total five year term effective July 1, 2015 through June 30, 2020, and (ii) increase the expenditure authority by \$379,000 providing a not to exceed total of \$649,000 over the term of the Agreement (see table below). Additional changes include administrative updates to the City contact information for invoices and replacement of the contracting provisions to include the Standard Provisions for City Contracts (Rev. 10/17).

Consulting Service	Compensation Type	Original Agreement		Proposed First Supplemental Agreement		Total Cost
		Annual Cost	Total Cost 3 Year Term	Annual Cost	Total Cost 2 Year Term	
Investment and Communication Services	Hourly Fee	\$90,000*	\$270,000*	\$189,500*	\$379,000*	\$649,000*

* Not to exceed amount

Prior to executing the Agreement, Personnel is to work with the City Ethics Commission (CEC) to ensure that Mercer submits current documents for compliance with the applicable contracting requirements prior to executing the Agreement including the Bidder Certification CEC Form 50 and Prohibited Contributors (Bidders) CEC Form 55.

In accordance with Charter Section 1022, the Personnel Department found that no City employees have the expertise to perform the work proposed in this Agreement.

Services provided under this Agreement are required on an ongoing basis and may have been performed prior to execution of this proposed First Supplemental Agreement. As a result, a ratification clause is included in the proposed Agreement to include any work performed during the entire term of the Agreement.

In accordance with Los Angeles Administrative Code Section (LAAC) 10.5(a)(7), City Council approval is not required for a contract with a service provider for the City's DCP with a cumulative term not exceeding five years. However, the proposed Agreement also includes services for the PSP. As the proposed Agreement exceeds a three year term in support of the PSP, in addition to the DCP, Council approval is required in accordance with LAAC 10.5(a).

FISCAL IMPACT STATEMENT

There is no impact to the General Fund. Contractual services supporting the Deferred Compensation Plan and Pension Savings Plan are paid by third party administrators and funded by participant fees, in accordance with LAAC Division 4, Section 4.1407(f) and Section 4.1610(a), respectively. Approval of the proposed Agreement complies with the City's Financial Policies as sufficient funds are available to support the proposed expenditures in the Agreement.

**BOARD OF CIVIL SERVICE
COMMISSIONERS**

Room 380, PERSONNEL BUILDING

JEANNE A. FUGATE
PRESIDENT

RAUL PEREZ
VICE PRESIDENT

COMMISSIONERS:
ERICA L. JACQUEZ
NANCY P. MCCLELLAND
TODD SARGENT

BRUCE WHIDDEN
COMMISSION EXECUTIVE DIRECTOR

**CITY OF LOS ANGELES
CALIFORNIA**



ERIC GARCETTI
MAYOR

PERSONNEL DEPARTMENT

PERSONNEL BUILDING
700 EAST TEMPLE STREET
LOS ANGELES, CA 90012

Wendy G. Macy
GENERAL MANAGER

November 26, 2018

Honorable Eric Garcetti
Mayor, City of Los Angeles
Room 303, City Hall
Los Angeles, CA 90012

Attention: Mandy Morales, Legislative Coordinator

Subject: **REQUEST FOR REVIEW OF PROPOSED FIRST SUPPLEMENTAL
AGREEMENT TO THE PROFESSIONAL SERVICES AGREEMENT
(CONTRACT NO. C-127171) BETWEEN MERCER INVESTMENT
CONSULTING LLC AND THE CITY OF LOS ANGELES**

In accordance with Executive Directive No. 3, attached for your review and approval is a draft First Supplemental Agreement ("Agreement") to the Professional Services Agreement, Contract No. C-127171, ("Contract") between Mercer Investment Consulting LLC, ("Contractor") and the City of Los Angeles, acting by and through the City of Los Angeles Board of Deferred Compensation Administration ("Board") for the City of Los Angeles Deferred Compensation Plan ("DCP"), and through the Personnel Department for the City of Los Angeles Pension Savings Plan ("PSP"), to provide investment and communications consulting services. This request is being made on behalf of the Board and Personnel Department.

The City Attorney has requested that the General Manager Personnel Department be added as a signatory to this Agreement since it may involve PSP consulting costs. The original Agreement did not have the General Manager Personnel Department as a signatory.

Through Los Angeles Administrative Code (LAAC) Section 4.1407, the Board has the sole authority for the operation of the DCP. Additionally, in accordance with LAAC Division 10, Chapter 1, Article 1, the Board has the authority to enter into contracts with service providers for a period of up to five years. The Board entered into a three-year contract with the Contractor on July 1, 2015, to provide ongoing investment performance monitoring and reporting, ad hoc miscellaneous research and other assignments, and investment manager searches as directed by the Board, with a total contract amount not to exceed \$270,000. The contract expired on June 30, 2018. In order to continue the services provided by the Contractor, an Agreement must be executed.

The draft Agreement extends the term with the Contractor by two years, incorporates the updated Standard Provisions for City Contracts (Rev. 10/17), updates the City's contract, and increases the contract ceiling amount by \$379,000 for years four and five of the term. Contractor has agreed to maintain the current fee structure, with no increase in the hourly rates for the extension of the Agreement.

Background

The DCP is a voluntary supplemental retirement savings program (governmental 457 plan) for City employees who are contributing members of one of the City's three primary retirement/pension plans. Employees who enroll in the DCP make tax-advantaged contributions directly from their paychecks in order to increase their savings for retirement. The Board has a statutory and fiduciary obligation to act solely in the best interest of DCP participants.

The PSP is a mandatory retirement savings program for employees who are part-time, temporary, seasonal, or otherwise not a member in one of the City's three retirement/pension plans. PSP employees contribute 4.5% of their gross salary and the City makes a matching contribution of 3%. The PSP is administered by the Personnel Department with the Board of Deferred Compensation Administration providing an advisory role.

Basis for First Supplemental Agreement to Contract No. C-127171

At its meeting on March 20, 2018, the Board approved an extension of the Agreement from July 1, 2018, through June 30, 2020, and an increase of the contract ceiling amount by \$379,000 for the DCP. The General Manager of Personnel concurred with the extension of the term for the PSP.

Contract Compliance

With respect to the City's general contracting requirements, Contractor is compliant with the Slavery Disclosure and Border Wall Ordinances, Equal Benefits Ordinance, Non-Discrimination/Equal Employment Practices Provisions, Affirmative Action, and First Source Hiring Ordinance. The Personnel Department's Classification Division confirmed that the Charter Section 1022 determination previously made, which found that City employees do not have the expertise to perform this work, still applies, and that a new Charter Section 1022 determination is not necessary. Contractor's insurance certificate is current.

The Contractor's headquarters address is as follows:
777 South Figueroa Street, Suite 2400
Los Angeles, CA 90017

Representative for the Contractor:
Devon Muir, Principal
Mercer Investment Consulting LLC

Fiscal Impact

There will be no impact on the City's General Fund for DCP consulting services. In accordance with LAAC Division 4, Chapter 14, all of the City's administrative and operating costs are required to be paid from participant fees.

PSP consulting costs are a budgeted item in the Personnel Department's Employee Benefits Contractual Services account. PSP consulting costs will remain within budgeted amounts.

Recommendation

That the Board and the Personnel Department be authorized to execute the Agreement extending the term effective July 1, 2018, through June 30, 2020, and increasing the contract ceiling amount by \$379,000, for the DCP and the PSP.

Please contact Kevin Hirose of my staff at (213) 978-1595 if you have any questions.

Thank you for your consideration.



Wendy G. Macy
General Manager

Attachment

cc: Robert Roth, CAO

**FIRST SUPPLEMENTAL AGREEMENT TO THE PROFESSIONAL SERVICES
AGREEMENT (CONTRACT NO. C-127171) BETWEEN
THE CITY OF LOS ANGELES
AND
MERCER INVESTMENT CONSULTING LLC AND MERCER (US) INC.
FOR INVESTMENT AND COMMUNICATIONS CONSULTING SERVICES FOR
THE CITY OF LOS ANGELES DEFERRED COMPENSATION PLAN AND
PENSION SAVINGS PLAN**

This First Supplemental Agreement to the Professional Services Agreement (Contract No. C-127171), is made and entered into by and between Mercer Investment Consulting LLC, ("Contractor") and the City of Los Angeles, a municipal corporation (the "City"), acting by and through the City of Los Angeles Board of Deferred Compensation Administration (the "Board") for the City of Los Angeles Deferred Compensation Plan, and through the Personnel Department for the City of Los Angeles Pension Savings Plan, with reference to the following:

RECITALS

1. Effective July 1, 2015, the City and Contractor entered into a Professional Services Agreement (Contract No. C-127171) (the "Contract") for Contractor to provide investment and communications consulting services for the City of Los Angeles Deferred Compensation Plan and Pension Savings Plan (collectively "the Plans") in accordance with the provisions of Section 457 and 402(A) of the Internal Revenue Code of 1986, for the term commencing on July 1, 2015, through June 30, 2018;
2. The term of the Contract expired on June 30, 2018; however, the City has a continuing need for investment and communications consulting services;
3. City and Contractor have agreed to extend the provision of services for investment and communications consulting services for the Plans for the period of July 1, 2018, through June 30, 2020;
4. The Board, at its meeting held on March 20, 2018, approved the extension of the Contract for Deferred Compensation Plan services for an additional two year term, commencing on July 1, 2018, through June 30, 2020, and the increase of the Contract ceiling amount by \$379,000 for years four and five of the term, and authorized the Board Chairperson to enter into an agreement, under the same terms and conditions as are contained in the Contract;
5. The Personnel Department General Manager concurs with the extension of the Contract for Pension Savings Plan services; and

6. The City and Contractor agree that the compensation payable for the additional two-year term shall be at the same hourly rate as set forth in the Contract.

NOW THEREFORE, the City and Contractor, in consideration of the promises and of the recitals, terms and conditions, covenants and representations below, agree as follows:

AGREEMENT

1. The terms and conditions of the Contract shall be the terms and conditions of this First Supplemental Agreement, except as expressly modified herein. The Contract is attached hereto as Attachment No. 1 and incorporated herein by reference.
2. The term of this First Supplemental Agreement will commence on July 1, 2018, and will end on June 30, 2020, or at such time as all funding provided herein has been expended, whichever occurs first, and subject to the termination provisions herein ("Term").
3. Contractor's compensation for the services performed hereunder for the Term will not exceed the amount of \$379,000.
4. Article III, Subsection A(2)(a), of the Contract shall be amended to read as follows:

Invoices shall be submitted to:

Steven Montagna, Chief
Employee Benefits Division
City of Los Angeles Deferred Compensation Plan
200 North Spring Street, Room 867
Los Angeles, CA 90012

5. Article IV, Section A of the Contract, entitled "Standard Provisions for City Contracts," shall be amended as follows:

- (a) The first sentence shall be amended to read as follows:

Contractor agrees to comply with the Standard Provisions for City Contracts (Rev. 10/17), attached hereto as Attachment A and made a part hereof.

- (b) Subsection 1, entitled "PSC – 12 CONTRACTORS PERSONNEL" shall be replaced with "PSC – 11 Contractors Personnel";

- (c) Subsection 2, entitled "PSC – 20 INDEMNIFICATION" shall be replaced with "PSC – 18 Indemnification";
- (d) Subsection 3, entitled "PSC – 21 INTELLECTUAL PROPERTY INDEMNIFICATION" shall be replaced with "PSC – 19 Intellectual Property Indemnification";
- (e) Subsection 4, entitled "PSC – 25 DISCOUNT TERMS" shall be replaced with "PSC – 24 Best Terms"; and
- (f) Subsection 5, entitled "PSC – 29 AFFIRMATIVE ACTION PROGRAM" shall be replaced with "PSC – 26 Mandatory Provisions Pertaining to Non-Discrimination in Employment" and is to read as follows:

"Notwithstanding anything to the contrary in Los Angeles Administrative Code Sections 10.8.3(D) and 10.8.4(D), access to Contractor's records pertaining to employment and employment practices shall be subject to applicable laws that protect the privacy of Contractor's employees."

- 6. Attachment A to the Contract, entitled "Standard Provisions for City Contracts - (Rev. 06/14)" is hereby deleted and replaced with "Standard Provisions for City Contracts - (Rev. 10/17)," which is attached hereto as Attachment 2 and incorporated herein by reference.
- 7. In regard to Standard Provisions for City Contracts (Rev. 10/17), PSC – 22, entitled "Data Protection", the City acknowledges that it will not be providing City Data to Contractor in its performance of services under this First Supplemental Agreement.
- 8. Except as otherwise provided by this First Supplemental Agreement, all other terms and conditions of the Contract shall remain in full force and effect as part of this First Supplemental Agreement.
- 9. In the event of any inconsistency between the provisions in the body of this First Supplemental Agreement and the attachments hereto, the inconsistency shall be resolved by giving precedence to the documents in the following order, except as required by applicable ordinances and law:
 - (a) Paragraphs set forth in the body of this First Supplemental Agreement.
 - (b) Paragraphs set forth in the body of the Contract.
 - (c) Standard Provisions for City Contracts (Rev. 10/17).
 - (d) Any other attachments/exhibits to the Contract.

10. This First Supplemental Agreement shall take effect upon the occurrence of all of the following events:
 - (a) This First Supplemental Agreement has been signed on behalf of Contractor by the person or persons authorized to bind Contractor hereto;
 - (b) The Office of the City Attorney has indicated in writing its approval of this First Supplemental Agreement as to form; and
 - (c) This First Supplemental Agreement has been signed on behalf of the City by the person designated to so sign by the City by the City Council or employee authorized to enter into this agreement.
11. Due to the need for the Contractor's services to be provided on an ongoing basis and upon the commencement of the term of this First Supplemental Agreement, Contractor may have provided services prior to the execution of this First Supplemental Agreement. To the extent that said services were performed in accordance with the terms and conditions of this First Supplemental Agreement, those professional services are hereby accepted by the City and shall be treated as services performed under the terms and conditions herein.
12. This First Supplemental Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This First Supplemental Agreement consists of five (5) pages.

(Signature page to follow)

IN WITNESS, thereof, the parties hereto have caused this First Supplemental Agreement to Contract C-127171 to be signed by their respective duly authorized officers. By signing this First Supplemental Agreement, the parties certify that they have read and understood it, that they agree to be bound by the terms of the First Supplemental Agreement and that they have the authority to sign it. This First Supplemental Agreement is not binding on either party until approved by both parties.

THE CITY OF LOS ANGELES

By: _____
JOHN R. MUMMA
Chairperson, Board of Deferred
Compensation Administration

Date: _____

By: _____
WENDY G. MACY
General Manager, Personnel
Department

Date: _____

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By: _____
CURTIS S. KIDDER
Assistant City Attorney

Date: _____

**MERCER INVESTMENT
CONSULTING LLC**

By: _____
DEVON MUIR
Principal

Date: _____

MERCER (US) INC.

By: _____
ERIN WARD
Principal

Date: _____

ATTEST:

HOLLY L. WOLCOTT, City Clerk

By: _____
Deputy City Clerk

Date: _____

*** Approved Signature Methods:**

- 1) Two signatures: One of the Chairman of the Board of Directors, President, or Vice-President, and one of the Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer.
- 2) One signature of a Corporate-designated individual together with a properly attested resolution of the Board of Directors authorizing the individual to sign.

City Business License Number: 112670 51 L90
Internal Revenue Service Taxpayer Identification Number: 61-0736136
Agreement Number: C-127171

STANDARD PROVISIONS FOR CITY CONTRACTS

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. Construction of Provisions and Titles Herein

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Contract. The language of this Contract shall be construed according to its fair meaning and not strictly for or against **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" includes the party or parties identified in this Contract. The singular shall include the plural and if there is more than one **CONTRACTOR**, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

PSC-2. Applicable Law, Interpretation and Enforcement

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Contract with no additional compensation paid to **CONTRACTOR**.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

PSC-3. Time of Effectiveness

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR**;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

PSC-4. Integrated Contract

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of PSC-5 hereof.

PSC-5. Amendment

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-3.

PSC-6. Excusable Delays

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of **CONTRACTOR** shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both **CONTRACTOR** and Subcontractor, and without any fault or negligence of either of them. In such case, **CONTRACTOR** shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit **CONTRACTOR** to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

In the event **CONTRACTOR'S** delay or failure to perform arises out of a Force Majeure Event, **CONTRACTOR** agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

PSC-7. Waiver

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

PSC-8. Suspension

At **CITY'S** sole discretion, **CITY** may suspend any or all services provided under this Contract by providing **CONTRACTOR** with written notice of suspension. Upon receipt of the notice of suspension, **CONTRACTOR** shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to **CITY** until **CITY** gives written notice to recommence the services.

PSC-9. Termination

A. Termination for Convenience

CITY may terminate this Contract for **CITY'S** convenience at any time by providing **CONTRACTOR** thirty days written notice. Upon receipt of the notice of termination, **CONTRACTOR** shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. **CITY** shall pay **CONTRACTOR** its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by **CONTRACTOR** to effect the termination. Thereafter, **CONTRACTOR** shall have no further claims against **CITY** under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights **CITY** is entitled to, shall become **CITY** property upon the date of the termination. **CONTRACTOR** agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

B. Termination for Breach of Contract

1. Except as provided in PSC-6, if **CONTRACTOR** fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, **CITY** may give **CONTRACTOR** written notice of the default. **CITY'S** default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of **CITY**. Additionally, **CITY'S** default notice may offer **CONTRACTOR** an opportunity to provide **CITY** with a plan to cure the default, which shall be submitted to **CITY** within the time period allowed by **CITY**. At **CITY'S** sole discretion, **CITY** may accept or reject **CONTRACTOR'S** plan. If the default cannot be cured or if **CONTRACTOR** fails to cure within the period allowed by **CITY**, then **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. If the default under this Contract is due to **CONTRACTOR'S** failure to maintain the insurance required under this Contract, **CONTRACTOR** shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of

services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

3. If a federal or state proceeding for relief of debtors is undertaken by or against **CONTRACTOR**, or if **CONTRACTOR** makes an assignment for the benefit of creditors, then **CITY** may immediately terminate this Contract.
4. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates **CITY'S** laws, regulations or policies relating to lobbying, then **CITY** may immediately terminate this Contract.
5. Acts of Moral Turpitude
 - a. **CONTRACTOR** shall immediately notify **CITY** if **CONTRACTOR** or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
 - b. If **CONTRACTOR** or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, **CITY** may immediately terminate this Contract.
 - c. If **CONTRACTOR** or a Key Person is charged with or indicted for an Act of Moral Turpitude, **CITY** may terminate this Contract after providing **CONTRACTOR** an opportunity to present evidence of **CONTRACTOR'S** ability to perform under the terms of this Contract.
 - d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of **CONTRACTOR**.
- 6. In the event **CITY** terminates this Contract as provided in this section, **CITY** may procure, upon such terms and in the manner as **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to **CITY** for all of its costs and damages, including, but not limited to, any excess costs for such services.
- 7. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.
- 8. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- C. In the event that this Contract is terminated, **CONTRACTOR** shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

PSC-10. Independent Contractor

CONTRACTOR is an independent contractor and not an agent or employee of **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of **CITY**.

PSC-11. Contractor's Personnel

Unless otherwise approved by **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. **CITY** has the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** shall remove personnel from performing work under this Contract if requested to do so by **CITY**.

CONTRACTOR shall not use Subcontractors to assist in performance of this Contract without the prior written approval of **CITY**. If **CITY** permits the use of Subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. **CITY** has the right to approve **CONTRACTOR'S** Subcontractors, and **CITY** reserves the right to request replacement of any

Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

PSC-12. Assignment and Delegation

CONTRACTOR may not, unless it has first obtained the written permission of **CITY**:

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

PSC-13. Permits

CONTRACTOR and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance of this Contract. **CONTRACTOR** shall immediately notify **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to **CONTRACTOR'S** performance of this Contract.

PSC-14. Claims for Labor and Materials

CONTRACTOR shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any **CITY** property (including reports, documents, and other tangible or intangible matter produced by **CONTRACTOR** hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Contract.

PSC-15. Current Los Angeles City Business Tax Registration Certificate Required

For the duration of this Contract, **CONTRACTOR** shall maintain valid Business Tax Registration Certificate(s) as required by **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

PSC-16. Retention of Records, Audit and Reports

CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized **CITY** personnel or **CITY'S** representatives at any time. **CONTRACTOR** shall provide any reports requested by **CITY** regarding

performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, **CONTRACTOR** may, upon **CITY'S** written approval, submit the required information to **CITY** in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

PSC-17. Bonds

All bonds required by **CITY** shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 *et seq.*, as amended from time to time.

PSC-18. Indemnification

Except for the active negligence or willful misconduct of **CITY**, or any of its boards, officers, agents, employees, assigns and successors in interest, **CONTRACTOR** shall defend, indemnify and hold harmless **CITY** and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including **CONTRACTOR'S** employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by **CONTRACTOR**, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-19. Intellectual Property Indemnification

CONTRACTOR, at its own expense, shall defend, indemnify, and hold harmless the **CITY**, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its Subcontractors, in performing the work under this Contract; or (2) as a result of **CITY'S** actual or intended use of any Work Product (as defined in PSC-21) furnished by **CONTRACTOR**, or its Subcontractors, under this Contract. The rights and remedies of **CITY** provided in this section shall not be exclusive

and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-20. Intellectual Property Warranty

CONTRACTOR represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

PSC-21. Ownership and License

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by **CONTRACTOR** or its Subcontractors under this Contract (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of **CITY** for its use in any manner **CITY** deems appropriate. **CONTRACTOR** hereby assigns to **CITY** all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

CONTRACTOR agrees that a monetary remedy for breach of this Contract may be inadequate, impracticable, or difficult to prove and that a breach may cause **CITY** irreparable harm. **CITY** may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude **CITY** from seeking or obtaining any other relief to which **CITY** may be entitled.

For all Work Products delivered to **CITY** that are not originated or prepared by **CONTRACTOR** or its Subcontractors under this Contract, **CONTRACTOR** shall secure a grant, at no cost to **CITY**, for a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract such that **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein.

PSC-22. Data Protection

- A. **CONTRACTOR** shall protect, using the most secure means and technology that is commercially available, **CITY**-provided data or consumer-provided data acquired in the course and scope of this Contract, including but not limited to customer lists and customer credit card or consumer data, (collectively, the "City Data"). **CONTRACTOR** shall notify **CITY** in writing as soon as reasonably feasible, and in any event within twenty-four hours, of **CONTRACTOR'S** discovery or reasonable belief of any unauthorized access of City Data (a "Data Breach"), or of any incident affecting, or potentially affecting City Data related to cyber security (a "Security Incident"), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. **CONTRACTOR** shall begin remediation immediately. **CONTRACTOR** shall provide daily updates, or more frequently if required by **CITY**, regarding findings and actions performed by **CONTRACTOR** until the Data Breach or Security Incident has been effectively resolved to **CITY'S** satisfaction. **CONTRACTOR** shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with **CITY**. At **CITY'S** sole discretion, **CITY** and its authorized agents shall have the right to lead or participate in the investigation. **CONTRACTOR** shall cooperate fully with **CITY**, its agents and law enforcement.
- B. If **CITY** is subject to liability for any Data Breach or Security Incident, then **CONTRACTOR** shall fully indemnify and hold harmless **CITY** and defend against any resulting actions.

PSC-23. Insurance

During the term of this Contract and without limiting **CONTRACTOR'S** obligation to indemnify, hold harmless and defend **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 1 hereto). The insurance must: (1) conform to **CITY'S** requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

PSC-24. Best Terms

Throughout the term of this Contract, **CONTRACTOR**, shall offer **CITY** the best terms, prices, and discounts that are offered to any of **CONTRACTOR'S** customers for similar goods and services provided under this Contract.

PSC-25. Warranty and Responsibility of Contractor

CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

PSC-26. Mandatory Provisions Pertaining to Non-Discrimination in Employment

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and **CITY**. In performing this Contract, **CONTRACTOR** shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this Contract.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Affirmative Action Program" provisions of this Contract.

Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-27. Child Support Assignment Orders

CONTRACTOR shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, **CONTRACTOR** shall fully comply with all applicable State and Federal employment reporting requirements. Failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract. Failure of **CONTRACTOR** or principal owner to cure

the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-28. Living Wage Ordinance

CONTRACTOR shall comply with the Living Wage Ordinance, LAAC Section 10.37 *et seq.*, as amended from time to time. **CONTRACTOR** further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-29. Service Contractor Worker Retention Ordinance

CONTRACTOR shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-30. Access and Accommodations

CONTRACTOR represents and certifies that:

- A. **CONTRACTOR** shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. **CONTRACTOR** shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. **CONTRACTOR** shall provide reasonable accommodation upon request to ensure equal access to **CITY**-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

CONTRACTOR understands that **CITY** is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-31. Contractor Responsibility Ordinance

CONTRACTOR shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 *et seq.*, as amended from time to time.

PSC-32. Business Inclusion Program

Unless otherwise exempted prior to bid submission, **CONTRACTOR** shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. **CONTRACTOR** shall utilize the Business Assistance Virtual Network ("BAVN") at <https://www.labavn.org/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. **CONTRACTOR** shall perform subcontractor outreach activities through BAVN. **CONTRACTOR** shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of **CITY**.

PSC-33. Slavery Disclosure Ordinance

CONTRACTOR shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-34. First Source Hiring Ordinance

CONTRACTOR shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-35. Local Business Preference Ordinance

CONTRACTOR shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-36. Iran Contracting Act

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with **CITY** for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

PSC-37. Restrictions on Campaign Contributions and Fundraising in City Elections

Unless otherwise exempt, if this Contract is valued at \$100,000 or more and requires approval by an elected **CITY** office, **CONTRACTOR**, **CONTRACTOR'S** principals, and **CONTRACTOR'S** Subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those Subcontractors (the "Restricted Persons")

shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles **CITY** to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected **CITY** officials or candidates for elected **CITY** office for twelve months after this Contract is signed. Additionally, a **CONTRACTOR** subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any **CONTRACTOR** subject to Charter Section 470(c)(12) shall include the following notice in any contract with any Subcontractor expected to receive at least \$100,000 for performance under this Contract:

“Notice Regarding Restrictions on Campaign Contributions and Fundraising
in City Elections

You are a subcontractor on City of Los Angeles Contract #_____. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles (“**CITY**”) officials and candidates for elected **CITY** office for twelve months after the **CITY** contract is signed. You are required to provide the names and contact information of your principals to the **CONTRACTOR** and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at ethics.lacity.org or by calling the Los Angeles City Ethics Commission at (213) 978-1960.”

PSC-38. Contractors’ Use of Criminal History for Consideration of Employment Applications

CONTRACTOR shall comply with the City Contractors’ Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-39. Limitation of City’s Obligation to Make Payment to Contractor

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for **CITY** to comply with its governing legal requirements, **CITY** shall have no obligation to make any payments to **CONTRACTOR** unless **CITY** shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. **CONTRACTOR** agrees that any services provided by **CONTRACTOR**, purchases made by **CONTRACTOR** or expenses incurred by **CONTRACTOR** in excess of the appropriation(s) shall be free and without charge to **CITY** and **CITY** shall have no obligation to pay for the services, purchases or expenses. **CONTRACTOR** shall have no obligation to provide any services,

provide any equipment or incur any expenses in excess of the appropriated amount(s) until **CITY** appropriates additional funds for this Contract.

PSC-40. Compliance with Identity Theft Laws and Payment Card Data Security Standards

CONTRACTOR shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act ("FACTA"), including its requirement relating to the content of transaction receipts provided to Customers. **CONTRACTOR** also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards ("PCI DSS"). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, **CONTRACTOR** shall verify proper truncation of receipts in compliance with FACTA.

PSC-41. Compliance with California Public Resources Code Section 5164

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, **CONTRACTOR** shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by **CITY**. **CONTRACTOR** is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of **CONTRACTOR** working on premises to pass a fingerprint and background check through the California Department of Justice at **CONTRACTOR'S** sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

PSC-42. Possessory Interests Tax

Rights granted to **CONTRACTOR** by **CITY** may create a possessory interest. **CONTRACTOR** agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, **CONTRACTOR** shall pay the property tax. **CONTRACTOR** acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

PSC-43. Confidentiality

All documents, information and materials provided to **CONTRACTOR** by **CITY** or developed by **CONTRACTOR** pursuant to this Contract (collectively "Confidential Information") are confidential. **CONTRACTOR** shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by **CITY** or as required by law. **CONTRACTOR** shall immediately notify **CITY** of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.

EXHIBIT 1

INSURANCE CONTRACTUAL REQUIREMENTS

CONTACT For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at www.lacity.org/cao/risk. The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

1. Additional Insured/Loss Payee. The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.

2. Notice of Cancellation. All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.

3. Primary Coverage. CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.

4. Modification of Coverage. The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.

5. Failure to Procure Insurance. All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

CONTRACTOR'S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

6. Workers' Compensation. By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake

self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract.

7. California Licensee. All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

8. Aggregate Limits/Impairment. If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY'S protection are allowed without the CITY'S prior written consent.

9. Commencement of Work. For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-3, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

Required Insurance and Minimum Limits

Name: _____

Date: _____

Agreement/Reference: _____

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

Limits

Workers' Compensation (WC) and Employer's Liability (EL)

WC *Statutory*

EL _____

☐ Waiver of Subrogation in favor of City☐ Longshore & Harbor Workers☐ Jones Act

General Liability
☐ Products/Completed Operations☐ Sexual Misconduct☐ Fire Legal Liability☐ _____

Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work)

Professional Liability (Errors and Omissions)

Discovery Period _____

Property Insurance (to cover replacement cost of building - as determined by insurance company)
☐ All Risk Coverage☐ Boiler and Machinery☐ Flood☐ Builder's Risk☐ Earthquake☐ _____

Pollution Liability
☐ _____

Surety Bonds - Performance and Payment (Labor and Materials) Bonds

Crime Insurance

Other: _____